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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,559	09/09/2003	Yasunori Yomo	51093/DBP/A400	3085

23363 7590 02/13/2004

CHRISTIE, PARKER & HALE, LLP  
350 WEST COLORADO BOULEVARD  
SUITE 500  
PASADENA, CA 91105

EXAMINER
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BELL, KENT L

ART UNIT	PAPER NUMBER
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1661

DATE MAILED: 02/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/659,559

Applicant(s)

YOMO ET AL.

Examiner

Kent L. Bell

Art Unit

1661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status***application filed 9/9/03*

- 1) ☒ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 9/9/03 is/are: a) ☒ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

*K. L. Bell*

**Detailed Action**

**Objection to the Drawing**

The submitted photographic illustration filed September 9, 2003 is objected to under 35 CFR 1.165(a). By way of explanation, the photographic illustration should not be mounted (37 CFR 1.84(e)).

The rules for submitting drawings, 37 CFR 1.84 and 37 CFR 1.165, were amended effective November 29, 2000. The USPTO delayed enforcement of these changes until October 1, 2001. Complete details can be found in the May 22, 2001 *Official Gazette* (1246 OG 106-107) or on the Internet at: <http://www.uspto.gov/web/offices/com/sol/og/2001/week21/patwavr.htm>.

**Objection to the Disclosure**

**37 CFR 1.163**

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

**35 USC § 112**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to

### **Detailed Action**

enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164 (reproduced below) are controlling:

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

In plant applications filed under 35 U.S.C. 161, the requirements of 35 U.S.C. 112 are limited. The following is a quotation of 35 U.S.C. 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 35 CFR 1.163(a) and under 35 U.S.C. 112, first paragraph, because the specification presents less than a full, clear, and complete botanical description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

More Specifically:

**Detailed Action**

A. Page 1, line 20, and page 2, line 26, Applicant should delete “genus” as the recitations without this term are more than adequate.

B. Page 2, lines 8, 15-16, 27-28, and 32-33, Applicant should delete “at” through “Ltd.” (twice), “at” through “residing”, and “the” through “Ltd.”, respectively, as these recitations constitute unwarranted advertising (MPEP 1610).

C. Page 2, lines 17 and 18, Applicant is requested to set forth in the specification the patent status of ‘Red Dragon’. If patented in the United States, applicant should set forth in the specification the U.S. Patent number after the cultivar name, - (U.S. Plant Patent number)- -. If unpatented in the United States, applicant should simply state - (unpatented)- -after the cultivar name.

D. Page 2, lines 30-34, Applicant states the instant plant was asexually reproduced and the homogeneity and stability were confirmed. However, applicant has not stated whether the instant plant reproduces true to type in successive generations of asexual reproduction. The instant plant has to reproduce true to type in order to obtain a U.S. Plant Patent. Applicant should state in the specification - -The new cultivar reproduces true to type in successive generations of asexual reproduction.- -, if accurate.

**Detailed Action**

E. Page 8, lines 16-20, Applicant should set forth in the specification the age of the plant when described and container size, if grown in a container. Further, applicant should set forth in the specification the location where the instant plant was described.

F. Page 8, line 23, Applicant should set forth in the specification additional information relative to the instant plant including the typical and observed plant diameter.

G. Page 8, lines 24-29, Applicant should set forth in the specification additional information relative to the instant plant's stem including the typical and observed stem length.

H. Page 8, line 31, Applicant states "Arternate". It appears applicant may have intended to state "Alternate". Correction and/or clarification is necessary.

I. Page 8, line 30 to page 9, line 2, Applicant should set forth in the specification additional information relative to the instant plant's leaf including the typical and observed leaf apex and base descriptor.

**Detailed Action**

J. Page 9, lines 3 and 4, Applicant should set forth in the specification additional information relative to the instant plant's petiole including the typical and observed petiole diameter and coloration with reference to the employed color chart.

K. Page 9, lines 13-18, Applicant sets forth a labiate petal coloration. However, applicant does not state whether the coloration set forth is for the upper, lower, or both surfaces of the labiate petals. Applicant should set forth in the specification a color designation for the upper and lower labiate petal surfaces with reference to the employed color chart.

L. Page 9, lines 19 and 21, Applicant sets forth a Type of upper and lower labiate petal "Medium" and "Excurved". These recitations are not Types. Correction and/or clarification is necessary.

M. Applicant should set forth in the specification additional information relative to the instant plant's petals including the typical and observed petal length, width, and apex and margin descriptor.

N. Page 9, lines 24 and 25, Applicant should set forth in the specification the number of pistils per flower.

**Detailed Action**

O. Page 9, line 28, Applicant states "Calix". Applicant should check the spelling of calix.

P. Page 9, line 33, Applicant states flowering period is "Long". Applicant should set forth in the specification the typical and observed flowering period in a given location of culture.

Q. Applicant should set forth in the specification the lastingness of the bloom, on the plant.

R. Applicant should set forth in the specification the time it takes to produce a flowering plant.

The above listing may not be complete. Applicant should carefully review the disclosure and import into same any corrected or additional information which would aid in botanically identifying and/or distinguishing the cultivar for which United States Plant Patent protection is sought.



**Detailed Action**

**Claim Rejection**

**35 U.S.C. 112, 1st & 2nd Paragraphs**

Claim 1 is rejected under 35 U.S.C. 112, first and second paragraphs as not being supported by a clear and complete botanical description of the plant for the reasons set forth in the Objection to the Disclosure Section above.

**Comments**

Applicant should note the new amendment format which is now mandatory (Web site stated below).

<http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/revamdtprac.htm>

Applicant should send all correspondence to the following address:

COMMISSIONER FOR PATENTS  
P.O. BOX 1450  
ALEXANDRIA, VA 22313-1450

Serial Number: 10/659,559  
Art Unit: 1661

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## **Detailed Action**

### **Future Correspondence**

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kent L. Bell whose telephone number is (571) 272-0973. The Examiner can normally be reached Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached at (571) 272-0974.

The fax phone number for the group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

K. L. Bell

**KENT BELL  
PRIMARY EXAMINER**

*Kent L. Bell*